IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5459 OF 2007

Deepak Krishna Tarkar ....Petitioner.
V/s
Krishna Govind Tarkar & Ors. ....Respondents.

Mr.Asif Iqbal I. Patel, Adv. For the petitioner.

CORAM: A.P.DESHPANDE, J.
27/7/07

PC:

An application moved by the present petitioner/plaintiff seeking amendment of the plaint has been rejected by the trial Court on the ground that the petitioner has failed to establish that despite exercise of due diligence the plaintiff could not move the application before the commencement of the trial. The trial Court has observed in its order that the plaintiff had moved an application for obtaining certified copy of the mutation entry on 17.2.04 and the certified copy was received on the same day. The said document as such was available with the plaintiff in the month of February, 2004. It is further observed that the defendant had placed the certified copy of the same extract of mutation entry before the trial Court on 13.2.05 along with Exh.23. Plaintiff has given his say on the said exhibit and thus the Court presumed that the plaintiff was aware about the contents of the certified copy. Belatedly after trial commenced an application for amendment has been filed. The trial

Court has held that the amendment application cannot be granted in view of the proviso to Order 6 rule 17 of the Code Civil Procedure and thus rejected the application. Perused the order. Order does not suffer from any patent illegality warranting interference in exercise of writ jurisdiction. At this stage learned counsel for the petitioner seeks permission to withdraw the petition with liberty to raise grounds raised in the present writ petition in regular civil appeal if and in case suit filed by the petitioner is dismissed and the petitioner is required to file an appeal. Writ petition allowed to be withdrawn with liberty as prayed for.

27.7.07